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Before the
Surface Transportation Board

Decision

STB Ex Parte No. 582

Public Views on
Major Rail Consolidations

The Timing, Scope, and Usefulness
of Consolidation

Doug McGreevy
Purchasing Manager-Grain
Elenbaas Company, Inc.
PO Box 39
411 West Front St.
Sumas, WA 98295
(360) 988-5811

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As noted by the Surface Transportation Board in January of this year, this hearing has been prompted, in part, by the proposed merger of the BNSF and the CN rail companies. The Board has requested input by the users of the rail systems to determine how consolidation of major rail companies may be a benefit or detriment, not only to other rail companies, but also to the direct customers of the rail lines, and the general public. The board seeks views on how consolidations may affect the financial condition of the railroad industry, the ability of rail companies to provide responsive service at reasonable prices, and whether users feel the rail industry has the infrastructure to meet the expected challenge of major consolidations. Our company speaks from the standpoint of a captive user of the BNSF. We are a privately owned feed manufacturer located in Sumas, Washington, on the Northern border of the United States with British Columbia, Canada. Our business is primarily the production of dairy feed. We produce and deliver in excess of 80,000 tons of bulk and sacked feed per year. We receive approximately 40-50 hopper cars of various ingredients every month, the vast majority originating in the upper Midwest of the United States.

Depending on ones' location, a merger of rail extending from one end of the North American continent to the other can be seen as being quite beneficial, or not. In the case of the proposed BNSF/CN merger, Canadian farmers and companies would have access to the Gulf of Mexico and all points in between, without the charges now associated with transferring cars from one rail company's line to the other. Such access would not be welcomed by the U.S. growers, however, as they would be forced to compete even more vigorously for market share in both the U.S. and world markets. The poor economic situations in the world's grain importing countries, coupled with Canada, South America, Australia, and Europe's effectiveness at promoting their own exports at the expense of the U.S. farmer, and the tremendous bounty which the U.S. farmer showers the world's populace, has certainly not rewarded the U.S. farming community. In the eyes of U.S. agricultural producers and smaller rail users such as our company, there is no benefit to our industries from a major North/South merger of rail lines. For our needs, competition among rail transportation servers is vital, first and foremost, in order to foster and promote genuine competitive transportation rates.

It is quite doubtful that the consumers, or any taxpayer in the United States for that matter, would see any benefit in a major North/South rail consolidation. The beneficiaries would be few, mainly Canadian firms, some larger multinational companies, and the rail companies involved in the merger. If a U.S. firm did find a new market in Canada for its products, they could well endure the same experience with which our company is familiar, an experience we will expand in more detail later in this paper.

Economies of scale would most certainly not be passed to the consumer or the U.S. farmer. It has been demonstrated time and again that the reduction of competition, no matter the product represented, leads to disproportionate costs forced upon the affected groups of people or companies. This "reduction in competition" happens through the purchase of competitors, public preference of a product which results in market dominance, or the formation of monopolies. Past governmentally sanctioned monopolies in the electrical and telephone businesses have been reversed in recent years, resulting in true competitive rate structures and aggressive advances in technology through the actual creation of new business entities, all to the benefit of the consumer. Abuses led to these break-ups.

Sometimes abuses occur even without the presence of a monopoly by a single company. The recent revelation of how a few large vitamin companies were able to conspire to manipulate the worldwide vitamin trade* demonstrates the power of large consolidations The concentration and control of the target market to the very limits possible, for the financial well-being of the one business entity, is not for the good of the populace.

The situation I will next describe in some detail is done with great hesitancy, recognizing that we are opening ourselves up to the potential wrath and financial power of a company much more powerful than ourselves, a company upon which we depend to deliver much of our ingredient needs. To avoid bringing this situation to light at this time would be a disservice to the many other users of rail services who cannot, or do not have the resources, to bring to light a flagrant abuse of power.

Our company has a very good rapport with many of the fine employees and officers of the BNSF and we do not wish to bring hardship to any individual who may not be involved in the following situation.

Our company is aware of, and has documentation for, a specific instance in which the BNSF has distorted the soybean meal marketplace, at least on the Northwest Coast of Washington State, through a disproportionate rate structure, in order to capture, for the BNSF, the financial advantage that one particular company had, by virtue of their location, over their competitors. At one time, the supplier in question was able to quite effectively offer their product to our location at better values than their competitors due in large part to their location and freight structure. Their service was always timely and of great value to our company and customers. Whenever the BNSF found themselves short of rail cars, this supplier was able to deliver product using the cars of the short line on which they were located.

Beginning in April of 1999, our company became aware of the institution of a new rate structure which took away our suppliers' advantage over their competitors. Freight car rates have now been instituted which negated the financial advantage this supplier once enjoyed. Our company wrote to the management of the BNSF, arguing against their rate structure as being anti-competitive and resulting in a reduction of access to competitively priced product for our customers. Part of the defense for the new rates, made by the management of the BNSF, was that they felt they would "increase the competitive options in the market place". When we again stated our opposition to the rate structure, and to the defense postulated, a token $75/car reduction to the car rate was put in place, seemingly to placate our concerns. This reduction does not make up for the dramatic cost increases made by the new rate structure.

The supplier in question has made arrangements to do business with another rail company located some distance away from their home location, an expensive operation which allows them access to several destinations while using the services of a competing railroad. It is not, however, economical for them to use that particular option to ship product to our location.

Our company and customers, as well as the origin elevator's customers, are the poorer because of the actions of the BNSF. Competition between rail entities is non-existent as both the supplier's and our locations are captive to the BNSF for U.S. rail traffic.

Any argument that our company has access to the Canadian rail system, and thus competing rates, is negated by line haul charges instituted in 1999 on all rail from Canada to our facility. The movement from the Canadian border to our mill is about two miles and must traverse BNSF track for the entire distance. The charges now in place virtually eliminate Canadian rail as a source of competing rail access for ingredients by making it too expensive to bring almost all ingredient rail cars into our facility.

It is a demonstrated fact that if one is not forced to compete, then one tends to exert the maximum possible costs from both suppliers and customers. Monopolies tend to justify their existence as being for the greater good and for increased efficiencies, and promote copious arguments to that effect. In contrast, diversity and competition is what has allowed the United States to prosper and succeed where others fail. We urge you to disallow any consolidation of the magnitude which is being discussed today, in the best interests of the people of the United States.

*Vitamin Antitrust Litigation, Misc. No. 99-197th (TFH); (M.D.L. No. 1285), Nov. 3, 1999.